IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 451 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NIRUBEN RAJUBAHI CHHANABHAI KOLI PATEL

Versus

STATE OFGUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1,2

Ms.Archana Raval, Assistant GOVERNMENT PLEADER, for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/07/2004

ORAL JUDGEMENT

By filing this petition, the petitioner, who is a lady detenue, has challenged the detention order dated

24.12.2003, by which she is detained under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short) on the ground that she is doing bootlegging activity. Along with the order of detention, she was served with the grounds of detention of the same day. In the said grounds of detention, there is a reference about two pending cases. The said cases were registered under the provisions of the Bombay Prohibition Act. It is alleged that she was in possession of some whisky bottles and beer bottles, as mentioned in the complaint. The last offence is dated 10.11.2003 and she was released on bail on 11.11.2003. The learned Advocate for the petitioner submitted that there is a delay of about one-and-a-half months in passing the detention order from the last incident. He submitted that simply because the petitioner is released on bail, the Authority, under the guise of recording statements of secret witnesses, has resorted to preventive detention, by detaining her under PASA. To substantiate his say on this point, the learned Advocate for the petitioner has relied on the decision of this Court in Elesh Nandubhai Patel v. Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :-

> " ... ...
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> 21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would

> say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S. Ramamurthy reported in 1993(2) Suppli SCC 61.
>
> ... ..."

Relying on the above judgment of this Court, it is submitted by the learned Advocate for the petitioner that in order to cover up the delay, these statements are recorded.

In the affidavit-in-reply, this delay is not properly explained. The learned Advocate for the petitioner submitted that the petitioner is a lady detenue, and while she was in jail, she has given birth to a child, on 5th March, 2004. He submitted that the petitioner was released on parole by the Government from 20th March, 2004 to 25th June, 2004. Ms.Archana Raval, learned AGP, has verified this fact from the jail authorities and submitted that the fact that the petitioner has delivered a child is correct and she was released on parole. She submitted that, however, her application for revocation of the order passed under PASA, on this ground, is pending with the Home Department.

It is a very unfortunate thing that the petitioner was required to give birth to a child in the Jail. When the Government itself has released her on parole for such a long time, her application for revoking the detention order should have been taken up immediately as the newly born child is required to remain in the jail with the mother. If any such applications are filed, the Government should properly deal with them.

So far as the facts of the present case are concerned, on the ground of delay in passing the detention order, this petition is required to be allowed.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless she is required in connection with any other case. The Rule is made absolute accordingly.

June 5, 2004 (P.B. Majmudar, J.)

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(apj)